

2004

R. Michael Anderson and Robert H. Anderson v. Wilshire Investments LLC : Brief of Appellee

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Ronald Ady; Attorney for Appellants.

Mark F. James; Mark H. Richards; Hatch, James & Dodge; Attorneys for Appellee.

Recommended Citation

Brief of Appellee, *Anderson v. Wilshire Investments*, No. 20040278.00 (Utah Supreme Court, 2004).
https://digitalcommons.law.byu.edu/byu_sc2/2499

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH SUPREME COURT

R. MICHAEL ANDERSON and
ROBERT H. ANDERSON,

Appellants,

vs.

WILSHIRE INVESTMENTS, LLC,

Appellee.

**SUPREME COURT
BRIEF**

K F U

45.9

.59

DOCKET NO. 20040278

Supreme Court No. 20040278

BRIEF OF APPELLEE

ON APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
OF WASATCH COUNTY, STATE OF UTAH
HONORABLE DONALD J. EYRE PRESIDING

Ronald Ady (3694)
10 West 100 South, Ste. 425
Salt Lake City, Utah 84101
Telephone: (801) 539-1900

Attorney for Appellants

Mark F. James (5295)
Mark H. Richards (9018)
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City Utah, 84101
Telephone: (801) 363-6363

Attorneys for Appellee

**FILED
UTAH APPELLATE COURTS**

DEC 08 2004

IN THE UTAH SUPREME COURT

R. MICHAEL ANDERSON and
ROBERT H. ANDERSON,

Appellants,

vs.

WILSHIRE INVESTMENTS, LLC,

Appellee.

Supreme Court No. 20040278

BRIEF OF APPELLEE

ON APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
OF WASATCH COUNTY, STATE OF UTAH
HONORABLE DONALD J. EYRE PRESIDING

Ronald Ady (3694)
10 West 100 South, Ste. 425
Salt Lake City, Utah 84101
Telephone: (801) 539-1900

Attorney for Appellants

Mark F. James (5295)
Mark H. Richards (9018)
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City Utah, 84101
Telephone: (801) 363-6363

Attorneys for Appellee

TABLE OF CONTENTS

STATEMENT OF JURISDICTION	iv
STATEMENT OF THE ISSUES PRESENTED	iv
DETERMINATIVE LAW	iv
STATEMENT OF THE CASE	iv
STATEMENT OF THE FACTS	vii
SUMMARY OF ARGUMENT	xi
ARGUMENT	1
I. THE TRIAL COURT'S ORDER FROM WHICH APPELLANTS SEEK TO APPEAL IS NOT A FINAL ORDER	1
II. THE COURT OF APPEALS CORRECTLY DECIDED THAT BECAUSE THE TRIAL COURT RESERVED RULING ON APPELLEE'S REQUEST FOR ATTORNEYS' FEES, IT LACKED JURISDICTION TO HEAR APPELLANTS' APPEAL	5
CONCLUSION	8
ADDENDA	

TABLE OF AUTHORITIES

CASES

<i>A.J. Mackay Co. v. Okland Constr. Co.</i> , 817 P.2d 323 (Utah 1991)	4
<i>Donohue v. Mouille</i> , 913 P.2d 776 (Utah Ct. App. 1996)	5
<i>Kennecott Corp. v. State Tax Comm'n</i> , 814 P.2d 1099 (1991)	5
<i>Olson v. Salt Lake City School Dist.</i> , 724 P.2d 960 (Utah 1986)	5
<i>Pate v. Marathon Steel Co.</i> , 692 P.2d 765 (Utah 1984)	5
<i>ProMax Dev. Corp. v. Raile</i> , 998 P.2d 254 (Utah 2000)	7

RULES AND STATUTES

Utah Code Ann. § 38-9-1	vii, ix, 1, 3
Utah Code Ann. § 38-9-1(6)	vi, x
Utah Code Ann. § 38-9-4	viii, ix, x, 1, 3
Utah Code Ann. § 38-9-4(3)(b)(c)	viii, 2
Utah Code Ann. § 38-9-7	v, viii
Utah Code Ann. § 38-9-7(4)	vi, xi, 4
Utah Code Ann. § 38-9-7(5)(a)	vii, 1, 6
Utah Code Ann. § 38-9-7(5)(c)	vii, viii, 7

STATEMENT OF JURISDICTION

Appellee Wilshire Investments, L.L.C. (“Wilshire”) agrees with Appellants’ statement of jurisdiction.

STATEMENT OF ISSUES PRESENTED

ISSUE # 1: Whether the trial court’s order from which the Appellants seek to appeal is a final order.

Standard of Review: Because this issue is raised for the first time on appeal, this Court reviews the issue *de novo*.

ISSUE # 2: Whether the Utah Court of Appeals properly ruled that because a trial court reserved ruling on a request for attorneys fees, it lacked jurisdiction to hear Appellants’ appeal.

Standard of Review: Because the Utah Court of Appeals decided the attorneys’ fees issue as a matter of law, this Court reviews the Court of Appeals’ decision *de novo*.

DETERMINATIVE LAW

The following cases are determinative of the issues presented: *ProMax Dev. Corp. v. Raile*, 998 P.2d 254 (Utah 2000).

The following statute is determinative of the issues presented: Utah Code Ann. §§ 38-9-1 – 38-9-7 (“Wrongful Lien Act” or the “Act”).

STATEMENT OF THE CASE

In exchange for its making a substantial commercial loan in connection with a real estate development in Midway, Utah, Appellee required and received security for its loan that included trust deeds on the properties comprising the development. A material part

of that security was a trust deed (the “Trust Deed” or “Deed of Trust”) on property (the “Anderson Property”) owned by Appellants R. Michael Anderson and Robert H. Anderson. Appellants granted Appellee a lien in the Anderson Property in the form of the Trust Deed, and Security Title & Abstract Company (“Security Title”) in Provo, the title agency closing the loan, recorded the Trust Deed.

On May 1, 2002, Appellants filed, pursuant to Utah Code Ann. § 38-9-7, a Petition for Removal of Wrongful Lien (the “Petition”) in the Fourth Judicial District Court of Wasatch County, State of Utah, claiming that their grant of the Trust Deed to Appellee meant nothing—that, allegedly, “Respondent represented to the Andersons that if they provided a Deed of Trust to Respondent it would never foreclose on the Andersons’ property.” [R. at 28 (Appellants’ Memorandum in Support of Petition for Removal of Wrongful Lien at p. 1).] This claim was not only false, it was directly contrary to the language Deed of Trust. [R. at 40 (Deed of Trust at ¶ 25, stating that Deed of Trust is “absolute and unconditional”).] Appellants claimed in their Petition that when the Trust Deed was recorded, Appellee created a wrongful lien on the Anderson Property. Appellee responded to Appellants’ assertions by demonstrating to the trial court that (1) Appellee had loaned substantial amounts of money in connection with a development that includes the Property, (2) the Trust Deed that Appellants specifically granted to Appellee to help secure Appellee’s loans was an integral and material part of the loan transaction, and (3) Appellants themselves signed the Trust Deed and authorized its recordation.

Seven days after Appellants filed their Petition, they requested a summary proceeding hearing on the Petition pursuant to section 38-9-7 of the Act. The next day,

on May 8, 2002, the trial court conducted the summary proceeding hearing on Appellants' Petition. After carefully reviewing the issue, the trial court concluded that because Appellants indisputably signed the Trust Deed, the Trust Deed could not constitute a "wrongful lien" as that term is defined under Utah's Wrongful Lien Act.

Section 38-9-1(6) of the Act, which defines the term "wrongful lien," provides in relevant part:

"Wrongful lien" means any document that purports to create a lien or encumbrance on an owner's interest in certain real property and *at the time it is recorded or filed is not:*

* * *

(c) signed by or authorized pursuant to a document signed by the owner of the real property.

Utah Code Ann. § 38-9-1(6) (emphasis added).

The trial court held that because Appellants admitted that they signed the Trust Deed, Appellee's lien on the Anderson Property was not wrongful under the Wrongful Lien Act. Accordingly, the trial court refused to summarily nullify Appellee's lien and dismissed Appellants' Petition seeking summary nullification of Appellee's lien, concluding that pursuant to the express terms of the Act, "[a] summary proceeding under this section [such as that brought by the Appellants] is only to determine whether or not a document is a wrongful lien." Utah Code Ann. § 38-9-7(4).

Upon determining that Appellee's lien was not "wrongful," the trial court properly refused to make any further declaration regarding the parties' property rights. Instead, at the time the trial court made its ruling, it specifically held that its ruling only went to the

issue of summary removal of the alleged wrongful lien and that the court's ruling in no way affected Appellants' rights to pursue any other available legal remedies.

The trial court also exercised its discretion and reserved ruling on Appellee's request for attorneys' fees made pursuant to section 38-9-7(5)(c). That section provides in relevant part:

If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant.

Utah Code Ann. § 38-9-7(5)(c).

In reserving its judgment on Appellee's attorneys' fees request, the trial court stated that it would consider the request at a later time should Appellants choose to continue to litigate any other legal remedies.

Appellants appealed the trial court's decision to the Utah Court of Appeals, claiming that the trial court incorrectly denied its request for summary nullification of the lien at issue. The Court of Appeals ultimately held that because the trial court reserved ruling on Appellee's request for attorneys' fees, the Court of Appeals lacked jurisdiction to hear the appeal. The Court of Appeals correctly decided that it lacked jurisdiction to hear Appellants' appeal.

STATEMENT OF THE FACTS

1. In their May 1, 2002 Petition to Nullify Wrongful Lien, Appellants asserted five claims for relief:

a. Declaratory Relief. For a declaration that Appellee's lien was a wrongful lien as defined in Utah Code Ann. §38-9-1.

b. Quiet Title. For an order quieting title in Appellants pursuant to Utah Code Ann. §38-9-7(5)(a).

c. Damages. For damages as provided for by the Wrongful Lien Act, Utah Code Ann. §38-9-4.

d. Treble damages. For treble damages for intentionally filing a wrongful lien, as provided for by the Wrongful Lien Act, Utah Code Ann. § 38-9-4.

e. Attorney's fees. For attorney's fees as provided for by the Wrongful Lien Act, Utah Code Ann. §38-9-7(5)(c).

[Appellee's Addendum A, Petition to Nullify Wrongful Lien Pursuant to U.C.A. § 38-9-7; Brief of Appellants ("Appellants Brief") at p. 3.]

2. After the initial hearing on Appellants' Petition held by the trial court on May 8, 2002, Appellee filed with the trial court, on May 10, 2002, a proposed Findings, Conclusion, and Order Dismissing Petitioners' Petition for Removal of Wrongful Lien and Denying Motion for Reconsideration or New Trial. [R. at 174.]

3. Appellants in response filed a Notice of Objections to Respondent's Proposed Form of Order (Appellants' "Objections"). In its Objections, Appellants argued to the trial court as follows:

3. That the Court's denial of Petitioners' claim of wrongful lien did not determine all of Petitioners' claims in the Petition is confirmed by U.C.A. §38-9-4(3)(b)(c) which clearly states that the grounds for proceeding under the wrongful lien statute are not limited to wrongful lien but also include cases where the document filed as a lien is "groundless, contains a material misstatement or false claim." Petitioners in their memorandum to the Court and in their oral submissions argued at length those facts showing that the contested Deed of Trust was groundless, contained a material misstatement and was a false claim. The Court specifically acknowledged that it could not at a summary proceeding determine those claims.

4. In that regard, the Court responded to Petitioners claims of fraud, mis-delivery and lack of consideration (which claims are the basis for

Petitioners proceeding under U.C.A. §38-9-4(3)(b)(c)) by specifically finding, “Clearly you might have a very good case with respect to the other issues. And if it is good it will proceed on the basis of summary judgment.” This was a specific acknowledgment by the Court that it was not dealing with any issue at the hearing except wrongful lien;

5. The Court’s specific comment that, “How would I—otherwise we would have to have a full trial at this particular hearing as to all of these things you’ve raised.”. the Court’s comment that “[Summary disposition] is a proceeding that does not anticipated any discovery, that does not anticipate too much of an evidentiary hearing.”, and the Court’s finding that, “Other than that you have—it clearly states in the statute it does not prevent you from proceeding with any other remedies.” proves that the Court in denying the claim for wrongful lien could not dispose of an was not disposing of all of the issues before it at the summary proceeding.

[R. at 169-171.]

4. On July 17, 2002, the trial court held a hearing on Appellants’ Objections.

When the trial court issued its ruling at the conclusion of this hearing, the following exchange occurred between the trial court and Appellants’ counsel:

THE COURT: [R]ight now the only thing before me, your petition for removal cites the definitions of wrongful lien under 38-9-1 and says right—it’s a prayer to your petition. It says, “Court order declaring the deed of trust void *ab initio* as a wrongful lien pursuant to Utah Code Annotated 38-9-1.” And I found at the last hearing that it did not meet the wrongful lien definition under 38-9-1. There’s nothing else before the Court.

MR. ADY: Well, we also brought an action, Paragraph 2, to quiet title in the Andersons. And we also, in Paragraph 3, asked for treble damages pursuant to 38-9-4.

THE COURT: Okay. You have the right to those type of, you know, but not under the summary proceedings. The summary proceeding statute specifically says if a petition contains a claim for damages, the damage proceeding may not be expedited under this section.

MR. ADY: Correct. I agree, sir.

THE COURT: And so you might have a claim for damages under 38-9-4 and I have said that you can pursue that. And if you have quiet title action, you can pursue that.

[Appellee's Addendum B, Transcript of July 17, 2002 hearing, Fourth Judicial District Court, Case No. 020500229 before Judge Donald J. Eyre at pp. 47-48.]

5. At the July 17, 2002 hearing, the trial court also held that “as a conclusion of law [the Trust Deed] is not a wrongful lien and therefore the Court dismisses that portion of the Plaintiff's petition that asks for the Court to nullify the lien. It does not deal with the issues of ‘quiet title.’ It does not deal with the issue of potential monetary damages under 38-9-4 if it [*i.e.*, Appellants] can prove those other provisions that might subject the Respondent to civil liability.” [*Id.* at p. 52.]

6. On August 9, 2002, the trial court entered the Findings, Conclusion, and Order Dismissing Petitioners' Petition for Removal of Wrongful Lien and Denying Motion for Reconsideration or New Trial (the “Order”). The Order states, in relevant part:

1. That portion of Petitioners' Petition that asserts a wrongful lien under Utah Code Ann. §§ 38-9-1(6), et seq. is hereby dismissed;

* * *

3. Respondent's request for an award of costs and attorney's fees is denied at this time. The request is reserved for consideration by the Court at a later date should this case continue; . . .

[R. at 304-306; Appellants' Addendum C.]

7. After the Appellants again objected to the form of the proposed Order following the second hearing in the matter, the trial court issued a ruling stating that it had

closely reviewed the proposed Order and determined that it fairly reflected the trial court's ruling. The trial court stated it was that day executing

the Findings, Conclusions and Order Dismissing Petitioner's Petition for Removal of Wrongful Lien and Denying Motion for Reconsideration or New Trial. The Court has stated at both hearings in this matter that the denial of their Petition to Nullify Lien in ***no matter affects their rights to pursue other legal remedies as set forth in Section 38-9-7(4) U.C.A.***

[R. at 302; Appellee's Addendum C, Ruling, Fourth Judicial District Court, Case No. 020500229, entered on August 9, 2002 by Judge Donald J. Eyre (emphasis added).]

SUMMARY OF ARGUMENT

Appellants argue that the trial court's August 9, 2002 Order is a final order. In particular, Appellants assert that (1) the trial court failed to preserve their claims for quiet title and damages in its written Order despite the fact that the court verbally stated at the July 17, 2002 hearing regarding Appellants' Petition that it would preserve those claims; and (2) because each of the claims asserted in Appellants' Petition allegedly turn on the issue of whether Appellee's lien is a wrongful lien and because the trial court held that Appellee's lien is not wrongful, the trial court's holding "can only be construed as dismissing Appellants' entire petition." Appellants' Brief at p. 11.

Contrary to Appellants' assertions, the record in this matter clearly demonstrates that the trial court expressly preserved Appellants' quiet title and damages claims after finding that Appellee's lien was not wrongful. As Appellants are well-aware, the trial court preserved these claims after Appellants ardently argued to the court that its decision in a summary proceeding that Appellee's lien was not wrongful did not preclude Appellants from pursuing their quiet title and damages claims. Because the trial court expressly

preserved these claims based on Appellants' request, the trial court's Order is not a final order. Appellants' appeal is therefore improper.

Appellants also claim that the Utah Court of Appeals wrongly concluded that it lacked jurisdiction to hear Appellants' appeal. The Court of Appeals held that it lacked jurisdiction because the trial court had reserved ruling on Appellee's request for attorneys' fees, in reasonable anticipation that Appellants would continue to pursue their quiet title and damages claims given the fact that Appellants had insisted the trial court preserve those claims. Because Appellants never pursued their remaining claims, the Court of Appeals found that the trial court was not given the opportunity to resolve the issues of attorneys' fees.

Appellants argue that the Court of Appeals' decision is wrong because Appellants merely advised the trial court of an intention to amend their pleadings and the trial court had no authority to reserve jurisdiction to itself on the basis of Appellants' mere statement of an intention to amend. Appellants' argument is a red herring. While the Appellants discussed with the trial court possibly amending their pleadings to add additional defendants during the July 17, 2002 hearing, it is clear from the context of that hearing and the trial court's Order that the trial court reserved judgment on Appellee's attorneys' fees claim pending Appellants' pursuit of their quiet title and damages claims that Appellants' urged the trial court to preserve. Accordingly, the Court of Appeals correctly found that trial court was not given an opportunity to resolve the attorneys' fees issue because Appellants failed to pursue their *pending* claims.

ARGUMENT

I. THE TRIAL COURT'S ORDER FROM WHICH APPELLANTS SEEK TO APPEAL IS NOT A FINAL ORDER.

Appellants argue that the trial court's Order dated August 9, 2002 (the "Order"), disposed of Appellants' case in its entirety and is therefore a final order. Appellants' argument contradicts their own arguments made to the trial court and ignores the plain language of the Order and the trial court's August 19, 2002 written Ruling in this case.

Appellants argue that because each of the claims contained in their Petition were predicated upon a finding of wrongful lien, the trial court's finding in the Order that Appellee's lien was not a wrongful lien disposed of all of Appellants' claims on the merits. [Appellants' Brief at p. 11.] Thus, according to Appellants, paragraph 1 of the trial court's Order which dismisses "that portion of Petitioners' Petition that asserts a wrongful lien under Utah Code Ann. 38-9-1 et seq. . . ." can only be construed as dismissing Appellants' entire Petition. [*Id.*]¹ Appellants' argument ignores, however, the fact that Appellants made the exact opposite argument to the trial court in objecting to the proposed form of the Order submitted by Appellee and that, based on Appellants' arguments, the trial court expressly preserved Appellants' claims for quiet title and damages.

¹ Appellants also argue that the trial court's Order failed to preserve Appellants' claims under Utah Code Ann. § 38-9-7(5)(a) (for quiet title) and Utah Code Ann. § 38-9-4 (for damages for a groundless lien or material misstatement of facts) by omitting any specific reference preserving those claims. [Appellants' Brief at pp. 9, 15-16.] As demonstrated below, the trial court in fact specifically preserved these claims in its August 19, 2002 ruling, as expressly requested by Appellants.

Upon completion of the first hearing held by the trial court on Appellants' Petition and after Appellee submitted a proposed order to the trial court, Appellants filed a Notice of Objections to Respondent's Proposed Form of Order (Appellants' "Objections"). In its Objections, Appellants argued to the trial court as follows:

3. That the Court's denial of Petitioners' claim of wrongful lien did not determine all of Petitioners' claims in the Petition is confirmed by U.C.A. §38-9-4(3)(b)(c) which clearly states that the grounds for proceeding under the wrongful lien statute are not limited to wrongful lien but also include cases where the document filed as a lien is "groundless, contains a material misstatement or false claim." Petitioners in their memorandum to the Court and in their oral submissions argued at length those facts showing that the contested Deed of Trust was groundless, contained a material misstatement and was a false claim. The Court specifically acknowledged that it could not at a summary proceeding determine those claims.

4. In that regard, the Court responded to Petitioners claims of fraud, mis-delivery and lack of consideration (which claims are the basis for Petitioners proceeding under U.C.A. §38-9-4(3)(b)(c)) by specifically finding, "Clearly you might have a very good case with respect to the other issues. And if it is good it will proceed on the basis of summary judgment." This was a specific acknowledgment by the Court that it was not dealing with any issue at the hearing except wrongful lien;

5. The Court's specific comment that, "How would I—otherwise we would have to have a full trial at this particular hearing as to all of these things you've raised." the Court's comment that "[Summary disposition] is a proceeding that does not anticipated any discovery, that does not anticipate too much of an evidentiary hearing.", and the Court's finding that, "Other than that you have—it clearly states in the statute it does not prevent you from proceeding with any other remedies." proves that the Court in denying the claim for wrongful lien could not dispose of an was not disposing of all of the issues before it at the summary proceeding.

[R. at 169-171.]

The trial court then ordered a hearing on Appellants' Objections which was held on July 17, 2002.

When the trial court issued its ruling at the conclusion of the July 17, 2002 hearing, the following exchange occurred between the trial court and the Appellants' counsel:

THE COURT: [R]ight now the only thing before me, your petition for removal cites the definitions of wrongful lien under 38-9-1 and says right—it's a prayer to your petition. It says, "Court order declaring the deed of trust void ab initio as a wrongful lien pursuant to Utah Code Annotated 38-9-1." And I found at the last hearing that it did not meet the wrongful lien definition under 38-9-1. There's nothing else before the Court.

MR. ADY: Well, we also brought an action, Paragraph 2, to quiet title in the Andersons. And we also, in Paragraph 3, asked for treble damages pursuant to 38-9-4.

THE COURT: Okay. You have the right to those type of, you know, but not under the summary proceedings. The summary proceeding statute specifically says if a petition contains a claim for damages, the damage proceeding may not be expedited under this section.

MR. ADY: Correct. I agree, sir.

THE COURT: And so you might have a claim for damages under 38-9-4 and I have said that you can pursue that. And if you have quiet title action, you can pursue that.

[Appellee's Addendum B at pp. 47-48.] At that same hearing the trial court also held that "as a conclusion of law [the Trust Deed] is not a wrongful lien and therefore the Court dismisses that portion of the Plaintiff's petition that asks for the Court to nullify the lien. It does not deal with the issues of 'quiet title.' It does not deal with the issue of potential monetary damages under 38-9-4 if it [*i.e.*, Appellants] can prove those other provisions that might subject the Respondent to civil liability." [*Id.* at p. 52.]

After the Appellants again objected to the proposed form of order following the second hearing in the matter, the Court issued a ruling stating that it had closely reviewed

the proposed Findings, Conclusions and Order and determined that they fairly reflected the trial court's ruling. The trial court stated it was that day executing

the Findings, Conclusions and Order Dismissing Petitioner's Petition for Removal of Wrongful Lien and Denying Motion for Reconsideration or New Trial. The Court has stated at both hearings in this matter that the denial of their Petition to Nullify Lien in no matter affects their rights to pursue other legal remedies as set forth in Section 38-9-7(4) U.C.A.

[Appellee's Addendum C.]

It is clear from the record in this case that the trial court specifically ruled that it denied Appellants' Petition so far as it sought summary disposition on the issue of whether Appellee's lien was wrongful and that it specifically preserved Appellants' claims for quiet title and damages, as expressly requested by Appellants.² Accordingly, contrary to Appellants' claim, the trial court's Order is not a final order.

The appellate courts in Utah repeatedly have stated that, absent the grant of permission to file an interlocutory appeal, which has not occurred in this case, non-final orders are not appealable and, in the event of an appeal, must be dismissed. In *A.J. Mackay Co. v. Okland Constr. Co.*, 817 P.2d (Utah 1991), the Court stated that an appeal of an order that was not final and neither certified nor eligible for certification under Utah Rule of Civil

² Indeed, findings beyond those actually made by the trial court would have contradicted the express language of 38-9-7(4), which provides that in the context of a petition to nullify lien, which is what the Appellants sought,

[a] summary proceeding under this section is only to determine whether or not a document is a wrongful lien. The proceeding shall not determine any other property or legal rights of the parties nor restrict other legal remedies of any party.

Procedure 54(b) is not properly taken and should be dismissed. Many other decisions by Utah courts make this clear. *See, e.g., Kennecott Corp. v. State Tax Comm'n*, 814 P.2d 1099 (1991) (setting forth standards for whether an order is final); *Donohue v. Mouille*, 913 P.2d 776 (Utah Ct. App. 1996) (a party's failure to have an order certified for appeal under Rule 54(b) deprives the appellate courts of jurisdiction over the appeal); *Olson v. Salt Lake City School Dist.*, 724 P.2d 960 (Utah 1986) (no final order where trial court's order disposes of request for declaratory or injunctive relief but leaves unresolved other claims); *Pate v. Marathon Steel Co.*, 692 P.2d 765 (Utah 1984) (order that does not wholly dispose of a claim or a party is not “final” and thus is not appealable).

In this case, the trial court denied the relief the Appellants sought in the form of summary removal of an allegedly wrongful lien. That was the entire context of the trial court's ruling. The trial court's order is not a final order, and thus the order is not appealable as a matter of right. This Court therefore lacks jurisdiction over the appeal, and the appeal should be dismissed.

II. THE COURT OF APPEALS CORRECTLY DECIDED THAT BECAUSE THE TRIAL COURT RESERVED RULING ON APPELLEE’S REQUEST FOR ATTORNEYS’ FEES, IT LACKED JURISDICTION TO HEAR APPELLANTS’ APPEAL.

Appellants also argue that the Court of Appeals erred when it dismissed the Appellants’ appeal for lack of jurisdiction. The Court of Appeals found in its February 5, 2004 decision that because the trial court had reserved its ruling on Appellee’s request for attorneys’ fees until “other potential claims were resolved,” and because those potential claims were not pursued by the Appellants, Appellee’s claim for attorneys’ fees remains

pending before the trial court and therefore the Court of Appeals lacked jurisdiction to hear the Appellants' appeal. [A copy of the Court of Appeals' February 5, 2004 decision is attached as Addendum B to the Appellants' Brief.]

Appellants argue that the Court of Appeals February 5, 2004 decision is wrong because it "would have the trial court's ability to reserve jurisdiction on the issue of attorney's fees turn on whether the Appellants merely advised the trial court of an intention to amend, without having before the trial court any actual Rule 15 motion to amend pleadings." [Appellants' Brief at p. 12.] In other words, Appellants argue that the trial court's order regarding their petition to nullify Appellee's lien was final, that they had no potential claims left before the trial court, and that the trial court refused to deal with the issue of attorneys' fees. Appellants' argument is a red herring and is inconsistent with and ignores the context of the rulings of the trial court regarding Appellants' Petition and Appellee's request for attorneys' fees.

As set forth above, in their Petition, Appellants requested five separate claims for relief. In their first claim for relief, Appellants sought a declaratory order from the trial court that Appellee's lien was wrongful under section 38-9-7(5)(a) of the Wrongful Lien Act. Appellants also asserted claims for quiet title, damages and attorneys fees. In making its rulings in this matter, the trial court specifically held that it was dismissing only that portion of Appellants' Petition that asks for the Court to nullify Appellee's lien as a wrongful lien and that the trial court's Order did not deal with Appellants' claim for quiet title and damages.

It is in the context of this ruling that the trial court held that Appellee's "request for an award of costs and attorney's fees is denied at this time. The request is reserved for consideration by the Court at a later date should this case continue." [Appellants' Addendum C at p. 3, ¶ 3.]³

Accordingly, the trial court's ruling makes clear that it did not dispose of Appellants' claims for quiet title or damages and that it would consider Appellee's request for attorneys' fees at a later date when Appellants' remaining claims, (*i.e.* quiet title and damages), if pursued by them, were resolved. The Court of Appeals therefore correctly ruled that because Appellants did not pursue their remaining claims, the trial court was not given an opportunity to resolve the issue of Appellee's request for attorneys' fees. It is clear from the foregoing that Appellants' claim that the trial court reserved ruling on the attorneys' fees issue because Appellants had indicated that they might amend their pleadings is incorrect. The court reserved its ruling on Appellee's attorneys' fees claim in anticipation that Appellants would pursue their pending claims for quiet title and damages.

Under this Court's decision in *ProMax Dev. Corp. v. Raile*, 998 P.2d 254 (2000)⁴, the Court of Appeals properly held that it lacked jurisdiction to hear Appellants' appeal.

³ The Wrongful Lien Act, Utah Code Ann. § 38-9-7(5)(c), provides: "If the Court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant. . ."

⁴ The Court of Appeals relied on this Court's decision in *ProMax* in support of its ruling. In *Promax*, this Court held that "[a] trial court must determine the amount of attorneys' fees awardable to a party before the judgment becomes final for the purposes of an appeal under the Utah Rules of Appellate Procedure 3." *Promax*, 998 P.2d at 254.

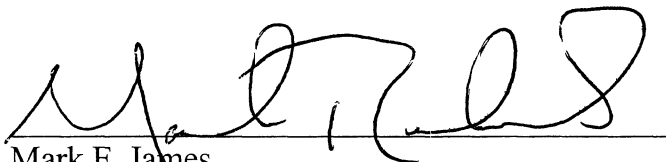
CONCLUSION

For the reasons set forth herein, this Court should affirm the February 5, 2004 decision of the Court of Appeals and dismiss Appellants' appeal for lack of jurisdiction.

DATED this 8th day of December, 2004

HATCH, JAMES & DODGE

By:

A handwritten signature in black ink, appearing to read 'Mark F. James', written over a horizontal line.

Mark F. James

Mark H. Richards

Attorneys for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I caused two true and correct copies of the foregoing to be mailed by U.S. Mail, first class postage prepaid, this 5th day of December, 2004, to the following:

Ronald Ady
10 West 100 South, Suite 425
Salt Lake City, Utah 84101

Aura Chaves

ADDENDA

CONSITING OF

- | | |
|--------------|---|
| Addendum “A” | Appellants’ Petition to Nullify Wrongful Lien Pursuant to
U.C.A. § 38-9-7. |
| Addendum “B” | Transcript of July 17, 2002 hearing, Fourth Judicial District
Court, Case No. 020500229 before Judge Donald J. Eyre. |
| Addendum “C” | Ruling, Fourth Judicial District Court, Case No. 020500229,
entered on August 9, 2002 by Judge Donald J. Eyre. |

Tab A



259483

RONALD ADY (#3694)
10 West 100 South, Ste 425
Salt Lake City, Utah
84101
Tel (801)539-1900
Attorney for the Petitioners/Plaintiffs

filed 5-1-02

IN THE FOURTH JUDICIAL DISTRICT COURT OF WASATCH COUNTY
STATE OF UTAH

**R. MICHAEL ANDERSON and ROBERT
H. ANDERSON,**

Petitioners/Plaintiffs

vs.

WILSHIRE DEVELOPMENT, L.L.C.,

Respondent

**WILSHIRE DEVELOPMENT, L.L.C.,
MARC S. JENSON, BRUCE MABEY, THE
SPRINGS OF ST. MORITZ RESORT,
L.L.C., DAVID G. TURCOTTE, BRENT V.
WOODSON and DOES 1 through V.**

Defendants.

**PETITION TO NULLIFY WRONGFUL
LIEN PURSUANT TO U.C.A. § 38-9-7**

**Civil No. 020500229
Judge DONALD J. EYRE**

PETITIONERS R. Michael Anderson and Robert H. Anderson, by and through their counsel of record, petition the Court for summary relief pursuant to Utah Code Ann. §38-9-7 to nullify, void and remove a Deed of Trust that was wrongfully recorded upon certain of Petitioner's real property located in Midway, Utah.

IN SUPPORT of their petition Petitioners submit the accompanying memorandum and affidavits concurrently filed on their behalf.

DATE 5-2-02 TIME 1615
BY FILED
UPON FILED FILED - ATA
SINDT COUNTY CLERK
561-8278

- ii. In the event Wilshire had to foreclose to recover on its security Wilshire would have the lands in Idaho and other property in Utah as security ~~and it would foreclose first on those properties and would not proceed against the Andersons' property,~~
- iii. The \$4.9 million Deed of Trust to Wilshire on the Andersons' property was not to secure Andersons repayment of that sum to Wilshire. Instead, it would secure Andersons contractual commitment to sell the Property to the Respondent's developer. Because the Andersons' property would generate most of the profits in the development, this in turn would ensure that the Respondent's developer would have the numbers to obtain construction financing for that development. In turn, that construction financing would take out the Deed of Trust for \$4.9 million recorded against the Andersons property, against the Idaho lands and against the other Utah property.

5. By a letter dated February 25, 2002 Respondent denied that it had made any such representations to the Andersons and by that denial declared its fraudulent intent in procuring the Andersons signatures on the Deed of Trust.

6. On or about August 21, 2001 Andersons deposited that Deed of Trust with Respondent's closing agent, Security Title. In making that deposit the Andersons specifically relied upon the Respondent's representations referred to in paragraph 4 above and upon Respondent's closing instructions to its closing agent that \$2.365 million in funds held by that closing agent were not to be released unless and until Respondent placed another \$1.5 million for the purchase of the Idaho lands that would ensure that the Property would not be foreclosed upon by Respondent.

RONALD ADY
ATTORNEY AT LAW
10 West 100 South, Ste. 425
SALT LAKE CITY, UT 84101
(801) 539-1800
FAX (801) 322-1054

12 Because the Deed of Trust was recorded

- i with signatures that were fraudulently procured, or
- ii without the Andersons authorization,

and because Respondent has, despite the fact that it had no recordable interest in that Deed of Trust, claimed the full benefit of that Deed of Trust, the Deed of Trust is a “wrongful lien” as that term is defined in Utah Code Ann. § 38-9-1.

13. Further and in the alternative, because the Deed of Trust was recorded as a result of the ~~Andersons mistaken delivery of that Deed of Trust for recording~~ and because Respondent has, despite the fact that it had no recordable interest in that Deed of Trust, claimed the full benefit of that Deed of Trust, the Deed of Trust is a “wrongful lien” as that term is defined in Utah Code Ann. § 38-9-1.

14 Further and in the alternative, because the Deed of Trust was recorded as a result of the ~~Respondent's wrongful conversion of that Deed of Trust for recording~~ and because Respondent has, despite the fact that it had no recordable interest in that Deed of Trust, claimed the full benefit of that Deed of Trust, the Deed of Trust is a “wrongful lien” as that term is defined in Utah Code Ann § 38-9-1.

15. Further and in the alternative, because the Deed of Trust was recorded as a result of the ~~Respondent's fraudulent conversion of that Deed of Trust for recording~~ and because Respondent has, despite the fact that it had no recordable interest in that Deed of Trust, claimed the full benefit of that Deed of Trust, the Deed of Trust is a “wrongful lien” as that term is defined in Utah Code Ann § 38-9-1.

16 On February 8, 2002, Andersons caused its attorney, Ronald Ady, to give the Respondents written notice that the Deed of Trust was a wrongful lien on the Property.

RONALD ADY
ATTORNEY AT LAW
10 West 100 South, Ste 425
SALT LAKE CITY, UT 84101
(801) 539-1900
FAX: (801) 322-1054

26. Because Andersons did not authorize the Respondent to record the Deed of Trust, or because Andersons signatures on that Deed of Trust were procured by fraud, and because Respondent has, despite the fact that it had no recordable interest in that Deed of Trust, claimed the full benefit of that Deed of Trust, the Deed of Trust is a “wrongful lien” as that term is defined in Utah Code Ann § 38-9-1.

27. Pursuant to Utah Code Ann. § 38-9-7(5)(a), Andersons are entitled to an order from the Court establishing and declaring that the Deed of Trust is a “wrongful lien” and thus, a nullity and void ab initio.

SECOND CLAIM OF RELIEF

(Releasing Property from Deed of Trust and Quieting Title)

28. Andersons incorporate all of the allegations the prior paragraphs of this Petition herein.

29. Because Andersons did not authorize the Respondent to record the Deed of Trust, or because Andersons signatures on that Deed of Trust were procured by fraud, and because Respondent has, despite the fact that it had no recordable interest in that Deed of Trust, claimed the full benefit of that Deed of Trust, the Deed of Trust is a “wrongful lien” as that term is defined in Utah Code Ann § 38-9-1.

30 Pursuant to Utah Code Ann § 38-9-7(5)(a), Andersons are entitled to an order from the Court releasing the Property from the Deed of Trust, and quieting Andersons’s title to the Property as against the Deed of Trust, and providing that a certified copy of said order may be recorded with the Wasatch County Recorder to remove the Deed of Trust of record (See Utah Code Ann § 38-9-7)

39. Respondents are liable to Andersons in the amount of \$1,000 or for treble Andersons's actual damages, whichever is greater, plus attorneys' fees. (See Utah Code Ann. § 38-9-4(2).)

FOURTH CLAIM FOR RELIEF

(Damages For Intentional Filing of Wrongful Lien)

40. Andersons incorporate all of allegations of the prior paragraphs of this Petition herein.

41. Because Andersons did not authorize the Respondent to record the Deed of Trust, or because Andersons signatures on that Deed of Trust were procured by fraud, and because Respondent has, despite the fact that it had no recordable interest in that Deed of Trust, claimed the full benefit of that Deed of Trust, the Deed of Trust is a "wrongful lien" as that term is defined in Utah Code Ann. § 38-9-1.

42. Pursuant to Utah Code Ann. § 38-9-4, a person who records or files, or who causes a document to be recorded or filed, when that person knows, or has reason to know that the document is a wrongful lien, or is groundless, or contains a material misstatement or false claim, is liable to the record holder of the property in the greater of the amount of \$3,000 or for treble the record holder's actual damages, plus attorneys fees.


43. The Respondents knew, or should have known that Andersons did not authorize the recording of the Deed of Trust.

44. As a result of the wrongful recording of the purported Deed of Trust, the Respondent is liable to Andersons for \$3,000 or for treble Andersons's actual damages, whichever amount is greater, plus attorneys' fees and costs. (See Utah Code Ann. § 38-9-4(3))

WHEREFORE, Andersons respectfully petition the Court as follows

1. For an order declaring the Deed of Trust void ab initio as a wrongful lien pursuant to Utah Code Ann § 38-9-1.
2. For an order releasing the Property from the Deed of Trust and quieting title to the Property in Andersons as against the Respondents
3. For statutory single or treble actual damages, to be proved at trial, as provided in Utah Code Ann § 38-9-4.
3. For attorneys' fees as provided by the Utah wrongful lien statute.
4. For costs of court.
5. For such other legal and equitable relief as the Court deems just and appropriate in the premises

DATED this 1st day of May, 2002



RONALD ADY

RONALD ADY
ATTORNEY AT LAW
10 West 100 South, Ste. 425
SALT LAKE CITY, UT 84101
(801) 538-1900
FAX, (801) 322-1054

Tab B

CONDENSED TRANSCRIPT

IN THE FOURTH JUDICIAL DISTRICT COURT

WASATCH COUNTY, STATE OF UTAH

R. MICHAEL ANDERSON and ROBERT
H. ANDERSON,

Petitioners/Plaintiffs,

-v-

WILSHIRE INVESTMENTS, LLC,

Respondent,

WILSHIRE INVESTMENTS, LLC,
MARC S. JENSON, BRUCE MABEY, THE
SPRINGS OF ST. MORITZ RESORT,
LLC, DAVID G. TURCOTTE, BRENT V.
WOODSON and DORES I through V,

Defendants.

No. 020500229

Judge Donald J. Eyre

July 17, 2002

TRANSCRIPT OF TAPED PROCEEDING

Reporter: Diana Kent, RPR

Notary Public in and for the State of Utah



CitiCourt, LLC
THE REPORTING GROUP

50 South Main, Suite 920
Salt Lake City, Utah 84144

Anderson vs Wilshire Investments
Transcript of Taped Proceeding * July 17, 2002

<p style="text-align: right;">PAGE 45</p> <p style="text-align: right;">45</p> <p>1 That deed of trust was only given to them to 2 facilitate financing and on the specific condition 3 that the \$1.5 million went to fund the purchase of the 4 lands in Idaho. That was the nature of this 5 transaction. 6 Wilshire had no recordable interest in 7 that deed of trust and just as the Court in Russell 8 did, this court can look behind that transaction, look 9 behind the face of that document, and say, "Yes, the 10 Andersons signed that; but was there any real 11 interest, any recordable interest in Wilshire when it 12 was recorded?" And our point is very simple; on those 13 circumstances, how can it be? So obviously, I mean it 14 makes out a prima facie case of fraud. 15 I subpoenaed in documents today. The 16 only things I subpoenaed in dealt with that 17 transaction, Mr. Jensen's affidavit that he filed here 18 last time, specific matters that relate to that. The 19 Court has a subpoena on its file. I faxed it up to 20 the Court. The funds that they had made available to 21 them to finance this property, whether or not Wilshire 22 ever had the \$1.5 million. Because that all relates 23 to the issue of whether there was a recordable lien at 24 the time that -- 25 THE COURT: Well, how can -- you know,</p>	<p style="text-align: right;">PAGE 47</p> <p style="text-align: right;">47</p> <p>1 enough, then it's open for the court to proceed in the 2 Siggard decision or as they did in the Siggard 3 decision and have a whole long trial. A wrongful lien 4 is a cause of action that can be pled in the trial. 5 THE COURT Well, you would not then get 6 a hearing within ten days, because I can tell you my 7 trial calendars are now out into March of 2003 And 8 so -- but that is not the purpose for that particular 9 statute. The purpose of that statute is to, on a 10 summary basis, have liens removed that are wrongful 11 pursuant to the definition of the statute. No other 12 reason. No other purpose. 13 MR. ADY: Well, admittedly, sir, that's 14 correct. And if it can be or if a case can be made 15 within the confines of the summary disposition 16 proceeding to the satisfaction of the Court that that 17 is the case, then the Court will deal with it. But 18 that doesn't preclude the next step of binding the 19 matter over for trial if the facts are not capable of 20 determination within the context of a summary 21 disposition proceeding. Is that not a reasonable 22 statement? 23 THE COURT: I told you from the very 24 beginning that you can file a complaint and allege any 25 number of causes of action that you believe you have</p>
<p style="text-align: right;">PAGE 46</p> <p style="text-align: right;">46</p> <p>1 you are talking about -- if that was the purpose of 2 this statute, the legislature intended it, it would 3 not be a summary proceeding. It would require a 4 trial. It would require discovery. And that's not 5 the Court's interpretation of the reason for this 6 particular statute. 7 MR. ADY: Well, with respect, sir, it 8 depends on how complicated the facts are in each case. 9 If you have a case like Russell where the Court looks 10 behind it and looks at the real estate contract, looks 11 what was done with it and the basis for the notice of 12 interest, and it was contested -- I should have 13 brought it with me today. I have the transcript of 14 that hearing. It was contested. The parties argued 15 back and forth about the merits of what was done. The 16 Court decided factually in favor of the Petitioners 17 and said, "We are going to rule in your favor on these 18 disputed facts." And so the facts apparently were 19 simple enough in Russell to be dealt with by summary 20 disposition. 21 If the facts are complicated enough - and 22 I recognize that the Court indicated last time that 23 they thought this case was factually very complex and 24 there was no way it was going to be resolved through 25 summary disposition - but if the facts are complicated</p>	<p style="text-align: right;">PAGE 48</p> <p style="text-align: right;">48</p> <p>1 against the Defendants in this matter. But as to 2 action which -- right now the only thing before me, 3 your petition for removal cites the definition of 4 wrongful lien under 38-9-1 and says right -- it's a 5 prayer to your petition. It says, "Court order 6 declaring the deed of trust void ab initio as a 7 wrongful lien pursuant to Utah Code Annotated 38-9-1." 8 And I found at the last hearing that it did not meet 9 the wrongful lien definition under 38-9-1. There's 10 nothing else before the Court. 11 MR. ADY: Well, we also brought an 12 action, Paragraph 2, to quiet title in the Andersons. 13 And we also, in Paragraph 3, asked for treble damages 14 pursuant to 38-9-4. 15 THE COURT: Okay. You have the right to 16 those type of, you know, but not under the summary 17 proceedings. The summary proceeding statute 18 specifically says if a petition contains a claim for 19 damages, the damage proceeding may not be expedited 20 under this section. 21 MR. ADY: Correct. I agree, sir. 22 THE COURT: And so you might have a claim 23 for damages under 38-9-4 and I have said that you can 24 pursue that And if you have quiet title action, you 25 can pursue that.</p>

MR. ADY: Given your earlier comments, sir, shall I or am I correct in assuming that you don't want to hear further submissions on attorneys fees?

THE COURT: Yes.

MR. ADY: Okay. Thank you, sir.

MR. JAMES: Now, it may be helpful, just very briefly, on the Russell v. Thomas case, I don't know if your Honor has had time to look at that case and I think that case does give some excellent guidance. Mine is one printed off of Westlaw so it may not -- it's an advance sheet so it may not track your copy exactly. But it looks like right towards the bottom of Page 1249, this is Page 5 of my printout, the Court first quotes, and this is the left-hand column, my Page 5 starts with Compare Blomquist v. Bingham. You see where it's indented, Compare Blomquist v. Bingham cite.

THE COURT: Okay.

MR. JAMES: And then the next paragraph talks about 38-9-7, expedited.

THE COURT: Correct.

MR. JAMES: The next paragraph specifically defines wrongful lien quoting from the statute.

THE COURT: Right.

MR. JAMES: And then the Court says, "It is undisputed that Subsections B and C of Section 38-9-1(6) do not apply. The issue is whether Defendant -- and I will submit if it did apply it would end the inquiry. You could decide it under one of those. If one of those applied. It didn't. So it said the issue is whether Defendant's notice of interest was expressly authorized by Section 57-9-4, which obviously if 57-9-4 says "authorized by chapter and other state or federal statute", the Court has to say, "Is what we are dealing with authorized?" And the Court says this is a notice of interest. To file a notice of interest under section 57-9-4, the person must minimally claim to have an interest in the land. Whether Defendant's interest is an interest in land or a contractual right is governed by the agreement executed by the parties. All those are issues of law. Very plainly.

Then the Court said, "Well, look at the agreement." The Court says the agreement, as a matter of law, is unambiguous. It says that. And the plain, unambiguous language of the agreement -- and a court, as you know, can interpret an agreement as a matter of law, if it is plain and unambiguous. And moving to

headnote 5, "Under the plain, unambiguous language of the agreement, Defendants do not have an interest in the land but an agreement that the Plaintiffs will grant the Defendants an interest." And then skipping down, "Thus the agreement does not purport to convey an interest in land." The Court did all that as a matter of law. And consistent with the requirements of the statute, it did not have to determine any other property or legal rights of the parties nor restrict other legal remedies of the party. Thank you.

THE COURT: In this matter the Court, having reviewed the memorandum filed by Counsel, having heard oral arguments, the Court denies the motion for new trial, denies the motion for reconsideration, reaffirms its previous decision. And with respect to the objections made to the proposed order that Mr. James had submitted, let me just indicate that I would request, Mr. James, that you add these two findings: That the Court does find that the subject Trust Deed is expressly authorized by Utah statute, and that the Court finds that the subject Trust Deed was signed by the owners of the subject real property. And therefore, as a conclusion of law, it is not a wrongful lien. And therefore, the Court dismisses that portion of the Plaintiff's petition

that asks for the Court to nullify the lien.

(BLANK IN THE TAPE, THEN THE AUDIO PICKS UP WHERE IT LEFT OFF.)

(The Court Continues) It does not deal with the issue of quiet title. It does not deal with the issue of potential monetary damages under 38-9-4, if it can prove those other provisions that might subject the Respondent to civil liability.

MR. JAMES: Thank you, your Honor. Let me now just ask, my recollection - and I will need to look back at the petition - is this petition I believe purports to name some other Defendants. Is that right?

MR. ADY: Well, the petition names, but states no cause of action and says we will amend to do that later.

MR. JAMES: And I guess where I'm unclear now is, is that what you intend to do now?

MR. ADY: Right, is amend and add defendants.

MR. JAMES: And I'm just wondering what will be the triggering event to prompt a response to the portion of the petition that I assume deals with things other than --

MR. ADY: It will be the service of that

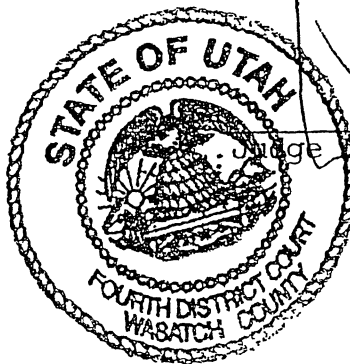
Tab C

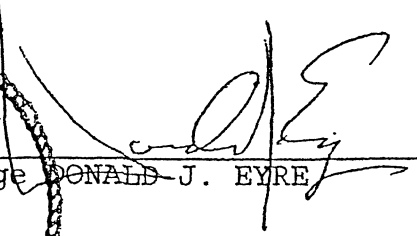
4th DISTRICT COURT - HEBER COURT
WASATCH COUNTY, STATE OF UTAH

R MICHAEL ANDERSON,	:	
Plaintiff,	:	RULING
	:	
	:	
vs.	:	Case No: 020500229
	:	
WILSHIRE DEVELOPMENT LLC,	:	Judge: DONALD J. EYRE
Defendant.	:	Date: 08/09/2002

Clerk: diannb

The above-entitled matter came before the Court upon Petitioner's Objections to Respondent's Proposed Form of Order on Hearing before the Court on July 17, 2002. The Court has reviewed the pleadings both in support and in opposition to the objections. The Court has closely reviewed the proposed Findings, Conclusions and Order and find that they do fairly reflect the decision of the Court at the hearing on July 17, 2002. The Court has this day executed the Findings, Conclusions and Order Dismissing Petitioner's Petition for Removal of Wrongful Lien and Denying Motion for Reconsideration or New Trial. The Court has stated at both hearings in this matter that the denial of their Petition to Nullify Lien in no matter affects their rights to pursue other legal remedies as set forth in Section 38-9-7(4) U.C.A.




Judge DONALD J. EYRE